

107TH CONGRESS
2D SESSION

S. _____

IN THE SENATE OF THE UNITED STATES

Mr. KYL introduced the following bill; which was read twice and referred to
the Committee on _____

A BILL

To approve the settlement of the water rights claims of
the Zuni Indian Tribe in Apache County, Arizona, and
for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Zuni Indian Tribe
5 Water Rights Settlement Act of 2002”.

6 **SEC. 2. FINDINGS AND PURPOSES.**

7 (a) FINDINGS.—Congress makes the following find-
8 ings:

9 (1) It is the policy of the United States, in
10 keeping with its trust responsibility to Indian tribes,

1 to promote Indian self-determination, religious free-
2 dom, political and cultural integrity, and economic
3 self-sufficiency, and to settle, wherever possible, the
4 water rights claims of Indian tribes without lengthy
5 and costly litigation.

6 (2) Quantification of rights to water and devel-
7 opment of facilities needed to use tribal water sup-
8 plies effectively is essential to the development of
9 viable Indian reservation communities, particularly
10 in arid western States.

11 (3) On August 28, 1984, and by actions subse-
12 quent thereto, the United States established a res-
13 ervation for the Zuni Indian Tribe in Apache Coun-
14 ty, Arizona upstream from the confluence of the Lit-
15 tle Colorado and Zuni Rivers for long-standing reli-
16 gious and sustenance activities.

17 (4) The water rights of all water users in the
18 Little Colorado River basin in Arizona have been in
19 litigation since 1979, in the Superior Court of the
20 State of Arizona in and for the County of Apache
21 in Civil No. 6417, In re The General Adjudication
22 of All Rights to Use Water in the Little Colorado
23 River System and Source.

24 (5) Recognizing that the final resolution of the
25 Zuni Indian Tribe's water claims through litigation

1 will take many years and entail great expense to all
2 parties, continue to limit the Tribe's access to water
3 with economic, social, and cultural consequences to
4 the Tribe, prolong uncertainty as to the availability
5 of water supplies, and seriously impair the long-term
6 economic planning and development of all parties,
7 the Tribe and neighboring non-Indians have sought
8 to settle their disputes to water and reduce the bur-
9 dens of litigation.

10 (6) After more than 4 years of negotiations,
11 which included participation by representatives of
12 the United States, the Zuni Indian Tribe, the State
13 of Arizona, and neighboring non-Indian communities
14 in the Little Colorado River basin, the parties have
15 entered into a Settlement Agreement to resolve all of
16 the Zuni Indian Tribe's water rights claims and to
17 assist the Tribe in acquiring surface water rights, to
18 provide for the Tribe's use of underground water,
19 and to provide for the wetland restoration of the
20 Tribe's lands in Arizona.

21 (7) To facilitate the wetland restoration project
22 contemplated under the Settlement Agreement, the
23 Zuni Indian Tribe acquired certain lands along the
24 Little Colorado River near or adjacent to its Res-
25 ervation that are important for the success of the

1 project and will likely acquire a small amount of
2 similarly situated additional lands. The parties have
3 agreed not to object to the United States taking title
4 to certain of these lands into trust status; other
5 lands shall remain in tribal fee status. The parties
6 have worked extensively to resolve various govern-
7 mental concerns regarding use of and control over
8 those lands, and to provide a successful model for
9 these types of situations, the State, local, and tribal
10 governments intend to enter into an Intergovern-
11 mental Agreement that addresses the parties' gov-
12 ernmental concerns.

13 (8) Pursuant to the Settlement Agreement, the
14 neighboring non-Indian entities will assist in the
15 Tribe's acquisition of surface water rights and devel-
16 opment of underground water, store surface water
17 supplies for the Zuni Indian Tribe, and make sub-
18 stantial additional contributions to carry out the
19 Settlement Agreement's provisions.

20 (9) To advance the goals of Federal Indian pol-
21 icy and consistent with the trust responsibility of the
22 United States to the Tribe, it is appropriate that the
23 United States participate in the implementation of
24 the Settlement Agreement and contribute funds for
25 the rehabilitation of religious riparian areas and

1 other purposes to enable the Tribe to use its water
2 entitlement in developing its Reservation.

3 (b) PURPOSES.—The purposes of this Act are—

4 (1) to approve, ratify, and confirm the Settle-
5 ment Agreement entered into by the Tribe and
6 neighboring non-Indians;

7 (2) to authorize and direct the Secretary of the
8 Interior to execute and perform the Settlement
9 Agreement and related waivers;

10 (3) to authorize and direct the United States to
11 take legal title and hold such title to certain lands
12 in trust for the benefit of the Zuni Indian Tribe; and

13 (4) to authorize the actions, agreements, and
14 appropriations as provided for in the Settlement
15 Agreement and this Act.

16 **SEC. 3. DEFINITIONS.**

17 In this Act:

18 (1) EASTERN LCR BASIN.—The term “Eastern
19 LCR basin” means the portion of the Little Colo-
20 rado River basin in Arizona upstream of the con-
21 fluence of Silver Creek and the Little Colorado
22 River, as identified on Exhibit 2.9 of the Settlement
23 Agreement.

1 (2) FUND.—The term “Fund” means the Zuni
2 Indian Tribe Water Rights Development Fund es-
3 tablished under section 6(a).

4 (3) INTERGOVERNMENTAL AGREEMENT.—The
5 term “Intergovernmental Agreement” means the
6 intergovernmental agreement between the Zuni In-
7 dian Tribe, Apache County, Arizona and the State
8 of Arizona described in Article 6 of the Settlement
9 Agreement.

10 (4) PUMPING PROTECTION AGREEMENT.—The
11 term “Pumping Protection Agreement” means an
12 agreement, described in Article 5 of the Settlement
13 Agreement, between the Zuni Tribe, the United
14 States on behalf of the Tribe, and a local landowner
15 under which the landowner agrees to limit pumping
16 of underground water on his lands in exchange for
17 a waiver of certain claims by the Zuni Tribe and the
18 United States on behalf of the Tribe.

19 (5) RESERVATION; ZUNI HEAVEN RESERVA-
20 TION.—The term “Reservation” or “Zuni Heaven
21 Reservation”, also referred to as “Kolhu:wala:wa”,
22 means the following property in Apache County, Ari-
23 zona: Sections 26, 27, 28, 33, 34, and 35, Township
24 15 North, Range 26 East, Gila and Salt River Base
25 and Meridian; and Sections 2, 3, 4, 9, 10, 11, 13,

1 14, 15, 16, 23, 26, and 27, Township 14 North,
2 Range 26 East, Gila and Salt River Base and Me-
3 ridian.

4 (6) SECRETARY.—The term “Secretary” means
5 the Secretary of the Interior.

6 (7) SETTLEMENT AGREEMENT.—The term
7 “Settlement Agreement” means that agreement
8 dated [_____, 2002], together with all exhibits
9 thereto. The parties to the Settlement Agreement in-
10 clude the Zuni Indian Tribe and its members, the
11 United States on behalf of the Tribe and its mem-
12 bers, the State of Arizona, the Arizona Game and
13 Fish Commission, the Arizona State Land Depart-
14 ment, the Arizona State Parks Board, the St. Johns
15 Irrigation and Ditch Co., the Lyman Water Co., the
16 Round Valley Water Users’ Association, the Salt
17 River Project Agricultural Improvement and Power
18 District, the Tucson Electric Power Company, the
19 City of St. Johns, the Town of Eagar, and the Town
20 of Springerville.

21 (8) SRP.—The term “SRP” means the Salt
22 River Project Agricultural Improvement and Power
23 District, a political subdivision of the State of Ari-
24 zona.

1 (9) TEP.—The term “TEP” means Tucson
2 Electric Power Company.

3 (10) TRIBE, ZUNI TRIBE, OR ZUNI INDIAN
4 TRIBE.—The terms “Tribe”, “Zuni Tribe”, or “Zuni
5 Indian Tribe” means the body politic and federally
6 recognized Indian nation, and its members.

7 (11) ZUNI LANDS.—The term “Zuni Lands”
8 means all the following lands, in Arizona, that, on
9 the effective date described in section 9(a), are—

10 (A) within the Zuni Heaven Reservation;

11 (B) held in trust by the United States for
12 the benefit of the Tribe or its members; or

13 (C) held in fee by or for the Tribe.

14 **SEC. 4. AUTHORIZATION, RATIFICATIONS, AND CONFIRMA-**
15 **TIONS.**

16 (a) SETTLEMENT AGREEMENT.—To the extent the
17 Settlement Agreement does not conflict with the provi-
18 sions of this Act, such Settlement Agreement is hereby
19 approved, ratified, confirmed, and declared to be valid.
20 The Secretary is authorized and directed to execute the
21 Settlement Agreement and any amendments approved by
22 the parties necessary to make the Settlement Agreement
23 consistent with this Act. The Secretary is further author-
24 ized to perform any actions required by the Settlement
25 Agreement and any amendments to the Settlement Agree-

1 ment that may be mutually agreed upon by the parties
2 to the Settlement Agreement.

3 (b) AUTHORIZATION OF APPROPRIATION.—There is
4 authorized to be appropriated to the Zuni Indian Tribe
5 Water Rights Development Fund established in section
6 6(a), \$19,250,000, to be allocated by the Secretary as fol-
7 lows:

8 (1) \$3,500,000, for water rights acquisitions by
9 the Zuni Tribe, or the United States on behalf of
10 the Zuni Tribe, to carry out paragraph 3.1.C of the
11 Settlement Agreement; and

12 (2) \$15,750,000, to fulfill the purposes of this
13 Act and carry out the provisions of the Settlement
14 Agreement.

15 (c) OTHER AGREEMENTS.—Except as provided in
16 section 9, the following 3 separate agreements, together
17 with all amendments thereto, are approved, ratified, con-
18 firmed, and declared to be valid:

19 (1) The agreement between SRP, the Zuni
20 Tribe, and the United States on behalf of the Tribe,
21 dated [_____, 2002].

22 (2) The agreement between TEP, the Zuni
23 Tribe, and the United States on behalf of the Tribe,
24 dated [_____, 2002.]

1 (3) The agreement between the Arizona State
2 Land Department, the Zuni Tribe, and the United
3 States on behalf of the Tribe, dated [_____
4 _____, 2002.]

5 **SEC. 5. TRUST LANDS.**

6 (a) NEW TRUST LANDS.—Upon satisfaction of the
7 conditions in paragraph 6.2 of the Settlement Agreement,
8 and after the requirements of section 9(a) have been met,
9 the Secretary shall take the legal title of the following
10 lands into trust for the benefit of the Zuni Tribe:

11 (1) In T. 14 N., R. 27 E., Gila and Salt River
12 Base and Meridian:

13 (A) Section 13: SW¹/₄, S¹/₂NE¹/₄SE¹/₄,
14 W¹/₂SE¹/₄, SE¹/₄SE¹/₄;

15 (B) Section 23: N¹/₂, N¹/₂SW¹/₄,
16 N¹/₂SE¹/₄, SE¹/₄SE¹/₄, N¹/₂SW¹/₄SE¹/₄,
17 SE¹/₄SW¹/₄SE¹/₄;

18 (C) Section 24: NW¹/₄, SW¹/₄, S¹/₂NE¹/₄,
19 N¹/₂SE¹/₄; and

20 (D) Section 25: N¹/₂NE¹/₄, SE¹/₄NE¹/₄,
21 NE¹/₄SE¹/₄.

22 (2) In T. 14 N., R. 28 E., Gila and Salt River
23 Base and Meridian:

11

1 (A) Section 19: $W^{1/2}E^{1/2}NW^{1/4}$,
2 $W^{1/2}NW^{1/4}$, $W^{1/2}NE^{1/4}SW^{1/4}$, $NW^{1/4}SW^{1/4}$,
3 $S^{1/2}SW^{1/4}$;

4 (B) Section 29: $SW^{1/4}SW^{1/4}NW^{1/4}$,
5 $NW^{1/4}NW^{1/4}SW^{1/4}$, $S^{1/2}N^{1/2}SW^{1/4}$, $S^{1/2}SW^{1/4}$,
6 $S^{1/2}NW^{1/4}SE^{1/4}$, $SW^{1/4}SE^{1/4}$;

7 (C) Section 30: $W^{1/2}$, $SE^{1/4}$; and

8 (D) Section 31: $N^{1/2}NE^{1/4}$, $N^{1/2}S^{1/2}NE^{1/4}$,
9 $S^{1/2}SE^{1/4}NE^{1/4}$, $NW^{1/4}$, $E^{1/2}SW^{1/4}$,
10 $N^{1/2}NW^{1/4}SW^{1/4}$, $SE^{1/4}NW^{1/4}SW^{1/4}$,
11 $E^{1/2}SW^{1/4}SW^{1/4}$, $SW^{1/4}SW^{1/4}SW^{1/4}$.

12 (b) FUTURE TRUST LANDS.—Upon satisfaction of
13 the conditions in paragraph 6.2 of the Settlement Agree-
14 ment, after the requirements of section 9(a) have been
15 met, and upon acquisition by the Zuni Tribe, the Sec-
16 retary shall take the legal title of the following lands into
17 trust for the benefit of the Zuni Tribe:

18 (1) In T. 14 N., R. 26E., Gila and Salt River
19 Base and Meridian: Section 25: $N^{1/2}NE^{1/4}$,
20 $N^{1/2}S^{1/2}NE^{1/4}$, $NW^{1/4}$, $N^{1/2}NE^{1/4}SW^{1/4}$,
21 $NE^{1/4}NW^{1/4}SW^{1/4}$.

22 (2) In T. 14 N., R. 27 E., Gila and Salt River
23 Base and Meridian:

24 (A) Section 14: $SE^{1/4}SW^{1/4}$, $SE^{1/4}$;

25 (B) Section 16: $S^{1/2}SW^{1/4}SE^{1/4}$;

12

1 (C) Section 19: $S^{1/2}SE^{1/4}SE^{1/4}$;

2 (D) Section 20: $S^{1/2}SW^{1/4}SW^{1/4}$,
3 $E^{1/2}SE^{1/4}SE^{1/4}$;

4 (E) Section 21: $N^{1/2}NE^{1/4}$,
5 $E^{1/2}NE^{1/4}NW^{1/4}$, $SE^{1/4}NW^{1/4}$, $W^{1/2}SW^{1/4}NE^{1/4}$,
6 $N^{1/2}NE^{1/4}SW^{1/4}$, $SW^{1/4}NE^{1/4}SW^{1/4}$,
7 $E^{1/2}NW^{1/4}SW^{1/4}$, $SW^{1/4}NW^{1/4}SW^{1/4}$,
8 $W^{1/2}SW^{1/4}SW^{1/4}$;

9 (F) Section 22: $SW^{1/4}NE^{1/4}NE^{1/4}$,
10 $NW^{1/4}NE^{1/4}$, $S^{1/2}NE^{1/4}$, $N^{1/2}NW^{1/4}$,
11 $SE^{1/4}NW^{1/4}$, $N^{1/2}SW^{1/4}NW^{1/4}$,
12 $SE^{1/4}SW^{1/4}NW^{1/4}$, $N^{1/2}N^{1/2}SE^{1/4}$,
13 $N^{1/2}NE^{1/4}SW^{1/4}$;

14 (G) Section 24: $N^{1/2}NE^{1/4}$, $S^{1/2}SE^{1/4}$;

15 (H) Section 29: $N^{1/2}N^{1/2}$;

16 (I) Section 30: $N^{1/2}N^{1/2}$, $N^{1/2}S^{1/2}NW^{1/4}$,
17 $N^{1/2}SW^{1/4}NE^{1/4}$; and

18 (J) Section 36: $SE^{1/4}SE^{1/4}NE^{1/4}$,
19 $NE^{1/4}NE^{1/4}SE^{1/4}$.

20 (3) In T. 14 N., R. 28 E., Gila and Salt River
21 Base and Meridian:

22 (A) Section 18: $S^{1/2}NE^{1/4}$, $NE^{1/4}SW^{1/4}$,
23 $NE^{1/4}NW^{1/4}SW^{1/4}$, $S^{1/2}NW^{1/4}SW^{1/4}$, $S^{1/2}SW^{1/4}$,
24 $N^{1/2}SE^{1/4}$, $N^{1/2}SW^{1/4}SE^{1/4}$, $SE^{1/4}SE^{1/4}$;

1 (B) Section 30: S¹/₂NE¹/₄,

2 W¹/₂NW¹/₄NE¹/₄; and

3 (C) Section 32: N¹/₂NW¹/₄NE¹/₄,

4 SW¹/₄NE¹/₄, S¹/₂SE¹/₄NE¹/₄, NW¹/₄, SW¹/₄,

5 N¹/₂SE¹/₄, SW¹/₄SE¹/₄, N¹/₂SE¹/₄SE¹/₄,

6 SW¹/₄SE¹/₄SE¹/₄.

7 (c) NEW RESERVATION LANDS.—Upon satisfaction
8 of the conditions in paragraph 6.2 of the Settlement
9 Agreement, after the requirements of section 9(a) have
10 been met, and upon acquisition by the Zuni Tribe, the Sec-
11 retary shall take the legal title of the following lands in
12 Arizona into trust for the benefit of the Zuni Tribe and
13 make such lands part of the Zuni Indian Tribe Reserva-
14 tion in Arizona: Section 34, T. 14 N., R. 26 E., Gila and
15 Salt River Base and Meridian.

16 (d) LIMITATION ON SECRETARIAL DISCRETION.—
17 The Secretary shall have no discretion regarding the ac-
18 quisitions described in subsections (a), (b), and (c), and
19 the Department of Justice “Standards for Preparation of
20 Title Evidence in Land Acquisitions by the United States”
21 shall not apply.

22 (e) LANDS REMAINING IN FEE STATUS.—The Zuni
23 Tribe may seek to have the legal title to additional lands
24 in Arizona, other than the lands described in subsection
25 (a), (b), or (c), taken into trust by the United States for

1 the benefit of the Zuni Indian Tribe pursuant only to a
2 subsequent act of Congress specifically authorizing such
3 transfer for the benefit of the Zuni Tribe.

4 (f) FINAL AGENCY ACTION.—Any written certifi-
5 cation by the Secretary under subparagraph 6.2.B of the
6 Settlement Agreement constitutes final agency action
7 under the Administrative Procedure Act and is reviewable
8 as provided for under chapter 7 of title 5, United States
9 Code.

10 (g) NO FEDERAL WATER RIGHTS.—Lands taken
11 into trust pursuant to subsection (a), (b), or (c) shall not
12 have Federal reserved rights to surface water or under-
13 ground water.

14 (h) STATE WATER RIGHTS.—The water rights and
15 uses for the lands taken into trust pursuant to subsection
16 (a) or (c) must be determined under subparagraph 4.1.A
17 and Article 5 of the Settlement Agreement. With respect
18 to the lands taken into trust pursuant to subsection (b),
19 the Zuni Tribe retains any rights or claims to water asso-
20 ciated with these lands under State law, subject to the
21 terms of the Settlement Agreement.

22 (i) FORFEITURE AND ABANDONMENT.—Water rights
23 that are appurtenant to lands taken into trust pursuant
24 to subsection (a), (b), or (c) shall not be subject to for-
25 feiture and abandonment.

1 (j) AD VALOREM TAXES.—With respect to lands that
2 are taken into trust pursuant to subsection (a) or (b)—

3 (1) such lands shall not be considered lands
4 within an Indian reservation or lands owned or held
5 by any Indian for the purposes of Article 20, para-
6 graph 5 of the Arizona Constitution, for the purpose
7 of paying in lieu taxes pursuant to this subsection
8 and the Intergovernmental Agreement between the
9 Zuni Tribe, Apache County, Arizona and the State
10 of Arizona; and

11 (2) the Zuni Tribe shall make payments in lieu
12 of all current and future State, county, and local ad
13 valorem property taxes that would otherwise be ap-
14 plicable to those lands if they were not in trust.

15 (k) AUTHORITY OF TRIBE.—For purposes of com-
16 plying with the provisions of this section and Article 6 of
17 the Settlement Agreement, the Tribe is authorized to enter
18 into—

19 (1) the Intergovernmental Agreement between
20 the Zuni Tribe, Apache County, Arizona, and the
21 State of Arizona; and

22 (2) any intergovernmental agreement required
23 to be entered into by the Tribe under the terms of
24 the Intergovernmental Agreement.

1 (l) FEDERAL ACKNOWLEDGEMENT OF INTERGOV-
2 ERNMENTAL AGREEMENTS.—The Secretary shall ac-
3 knowledge the terms of any intergovernmental agreement
4 entered into by the Tribe under this section and shall not
5 seek to abrogate those terms in any administrative or judi-
6 cial action. If a judicial action is commenced during a dis-
7 pute over any intergovernmental agreement entered into
8 under this section, and the United States is allowed to
9 intervene in such action, the United States shall not re-
10 move such action to the Federal courts.

11 (m) RULE OF CONSTRUCTION.—Notwithstanding
12 any other provision of this Act, nothing in this Act shall
13 be construed to alter the continued application of the Act
14 of May 25, 1918 (25 U.S.C. 211) within Arizona.

15 (n) DISCLAIMER.—Nothing in this section shall be
16 construed to repeal, modify, amend, change, or affect the
17 Secretary's obligations to the Zuni Tribe pursuant to the
18 Act entitled "An Act to convey certain lands to the Zuni
19 Indian Tribe for religious purposes" approved August 28,
20 1984 (Public Law 98-408; 98 Stat. 1533) (and as amend-
21 ed by the Zuni Land Conservation Act of 1990, (Public
22 Law 101-486; 104 Stat. 1174)).

23 **SEC. 6. DEVELOPMENT FUND.**

24 (a) ESTABLISHMENT OF THE FUND.—There is here-
25 by established in the Treasury of the United States, a

1 fund to be known as the “Zuni Indian Tribe Water Rights
2 Development Fund” to be managed and invested by the
3 Secretary. The Fund shall consist of the amounts author-
4 ized to be appropriated in section 4(b), and the appropria-
5 tion to be contributed by the State of Arizona pursuant
6 to paragraph 7.6 of the Settlement Agreement. The Sec-
7 retary shall deposit into the Fund any other funds paid
8 to the Secretary on behalf of the Zuni Tribe pursuant to
9 the Settlement Agreement.

10 (b) INVESTMENT OF THE FUND.—The Secretary
11 shall invest amounts in the Fund in accordance with—

12 (1) the Act of April 1, 1880 (21 Stat. 70, ch.
13 41, 25 U.S.C. 161); and

14 (2) the first section of the Act approved June
15 24, 1938 (52 Stat. 1037, ch. 648, 25 U.S.C. 162a).

16 (c) MANAGEMENT OF AND WITHDRAWAL FROM THE
17 FUND.—The Secretary shall manage the Fund, make in-
18 vestments from the Fund, and make funds available from
19 the Fund for distribution to the Zuni Tribe consistent with
20 the American Indian Trust Fund Management Reform
21 Act of 1994 (25 U.S.C. 4001 et seq.) (in this Act referred
22 to as the “Trust Fund Reform Act”) and the Settlement
23 Agreement. Notwithstanding the preceding sentence, the
24 funds made available to the Zuni Tribe pursuant to sec-
25 tion 4(b)(1) may be distributed to the Zuni Tribe upon

1 a written request stating the need for the funds for water
2 rights or options purchases. If the Tribe exercises its right
3 to withdraw monies from the Fund, neither the Secretary
4 nor the Secretary of the Treasury shall retain any over-
5 sight over or liability for the accounting, disbursement, or
6 investment of the monies withdrawn from the Fund, ex-
7 cept as provided in the withdrawal plan.

8 (d) AVAILABILITY OF MONIES FROM THE FUND.—

9 (1) IN GENERAL.—Those monies allocated by
10 the Secretary to the accounts in the Fund estab-
11 lished under subsection (a) shall draw interest con-
12 sistent with subsections (b) and (c) upon appropria-
13 tion.

14 (2) FUNDS TO CARRY OUT THIS ACT.—The
15 funds authorized to be appropriated pursuant to sec-
16 tion 4(b)(2) and funds contributed by the State of
17 Arizona pursuant to paragraph 7.6 of the Settle-
18 ment Agreement shall be available for expenditure or
19 withdrawal only after the requirements of section
20 9(a) have been met.

21 (3) WATER RIGHTS ACQUISITIONS.—The funds
22 authorized to be appropriated pursuant to section
23 4(b)(1) shall be available upon appropriation in ac-
24 cordance with subsection (c) for use in accordance
25 with section 4(b)(1).

1 (4) RIGHT OF SET OFF.—In the event the re-
2 quirements of section 9(a) have not been met and
3 the Settlement Agreement has become null and void
4 under section 9(b), the United States shall be enti-
5 tled to set off any funds expended or withdrawn
6 from the amount appropriated pursuant to section
7 4(b)(1), together with any interest accrued, against
8 any claims asserted by the Zuni Tribe against the
9 United States related to water rights at the Zuni
10 Heaven Reservation. Any water rights acquired with
11 such monies shall be credited against any water
12 rights secured by the Zuni Tribe, or the United
13 States on its behalf, for the Zuni Heaven Reserva-
14 tion in the Little Colorado River General Stream
15 Adjudication or in any future settlement of these
16 claims.

17 (e) NO PER CAPITA DISTRIBUTIONS.—No part of the
18 Fund shall be distributed on a per capita basis to members
19 of the Zuni Tribe.

20 **SEC. 7. CLAIMS EXTINGUISHMENT; WAIVERS AND RE-**
21 **LEASES.**

22 (a) FULL SATISFACTION OF MEMBERS' CLAIMS.—

23 (1) IN GENERAL.—The benefits realized by the
24 Tribe and its members under this Act shall con-
25 stitute full and complete satisfaction of all members'

1 claims for water rights or injuries to water rights
2 under Federal, State, and other laws (including
3 claims for water rights in groundwater, surface
4 water, and effluent) for Zuni Lands from time im-
5 memorial to the effective date described in section
6 9(a).

7 (2) NO RECOGNITION OR ESTABLISHMENT OF
8 INDIVIDUAL WATER RIGHT.—Nothing in this Act
9 shall be construed as recognizing or establishing any
10 right of a member of the Tribe to water on the Res-
11 ervation.

12 (b) TRIBE AND UNITED STATES AUTHORIZATION
13 AND WAIVER.—The Tribe, on behalf of itself and its mem-
14 bers and the Secretary on behalf of the United States in
15 its capacity as trustee for the Zuni Tribe and its members,
16 are authorized, as part of the performance of their obliga-
17 tions under the Settlement Agreement, to execute a waiver
18 and release, subject to paragraph 11.4 of the Settlement
19 Agreement, for claims against the State of Arizona, or any
20 agency or political subdivision thereof, or any other per-
21 son, entity, corporation, or municipal corporation, under
22 Federal, State, or other law for any and all—

23 (1) past, present, and future claims to water
24 rights (including water rights in groundwater, sur-
25 face water, and effluent) for Zuni Lands from time

1 immemorial through the effective date described in
2 section 9(a) and any time thereafter, except for
3 claims within the Zuni Protection Area as provided
4 in Article 5 of the Settlement Agreement;

5 (2) past and present claims for injuries to
6 water rights (including water rights in groundwater,
7 surface water, and effluent and including claims for
8 damages for deprivation of water rights and any
9 claims for changes to underground water table lev-
10 els) for Zuni Lands from time immemorial through
11 the effective date described in section 9(a);

12 (3) past, present, and future claims for water
13 rights and injuries to water rights (including water
14 rights in groundwater, surface water, and effluent
15 and including any claims for damages for depriva-
16 tion of water rights and any claims for changes to
17 underground water table levels) from time immemo-
18 rial through the effective date described in section
19 9(a), and any time thereafter, for lands outside of
20 Zuni lands but located within the Little Colorado
21 River basin in Arizona, based upon aboriginal occu-
22 pancy of lands by the Zuni Tribe or its predecessors;

23 (4) past and present claims for injuries to
24 water quality accruing from time immemorial
25 through the effective date described in section 9(a)

1 for lands within the Little Colorado River basin in
2 Arizona; and

3 (5) future claims for injuries to water quality
4 accruing after the effective date described in section
5 9(a) on any lands within the Eastern LCR basin
6 caused by—

7 (A) the lawful diversion or use of surface
8 water;

9 (B) the lawful withdrawal or use of under-
10 ground water, except within the Zuni Protection
11 Area as provided in Article 5 of the Settlement
12 Agreement;

13 (C) the Parties' performance of their obli-
14 gations under this Settlement Agreement;

15 (D) the discharge of oil associated with
16 routine physical or mechanical maintenance of
17 wells or diversion structures;

18 (E) the discharge of oil associated with
19 routine start-up and operation of well pumps;

20 or

21 (F) any combination thereof.

22 (c) TRIBAL WAIVER AGAINST THE UNITED
23 STATES.—The Tribe is authorized, as part of the perform-
24 ance of its obligations under the Settlement Agreement,
25 to execute a waiver and release, subject to paragraphs

1 11.4 and 11.6 of the Settlement Agreement, for claims
2 against the United States (acting in its capacity as trustee
3 for the Zuni Tribe or its members, or otherwise acting
4 on behalf of the Zuni Tribe or its members), including
5 any agencies, officials, or employees thereof, for any and
6 all—

7 (1) past, present, and future claims to water
8 rights (including water rights in groundwater, sur-
9 face water, and effluent) for Zuni Lands, from time
10 immemorial through the effective date described in
11 section 9(a) and any time thereafter;

12 (2) past and present claims for injuries to
13 water rights (including water rights in groundwater,
14 surface water, and effluent and any claims for dam-
15 ages for deprivation of water rights) for Zuni Lands
16 from time immemorial through the effective date de-
17 scribed in section 9(a);

18 (3) past, present, and future claims for water
19 rights and injuries to water rights (including water
20 rights in groundwater, surface water, and effluent
21 and any claims for damages for deprivation of water
22 rights) from time immemorial through the effective
23 date described in section 9(a), and any time there-
24 after, for lands outside of Zuni Lands but located
25 within the Little Colorado River basin in Arizona,

1 based upon aboriginal occupancy of lands by the
2 Zuni Tribe or its predecessors; and

3 (4) past and present claims for failure to pro-
4 tect, acquire, or develop water rights of, or failure
5 to protect water quality for, the Zuni Tribe within
6 the Little Colorado River basin in Arizona from time
7 immemorial through the effective date described in
8 section 9(a).

9 **SEC. 8. MISCELLANEOUS PROVISIONS.**

10 (a) **WAIVER OF SOVEREIGN IMMUNITY.**—If any party
11 to the Settlement Agreement, an agreement described in
12 paragraph (1), (2), or (3) of section 4(c), a Pumping Pro-
13 tection Agreement, or a landowner or water user in the
14 Little Colorado River basin in Arizona, files a lawsuit only
15 relating directly to the interpretation or enforcement of
16 this Act, the Settlement Agreement, an agreement de-
17 scribed in paragraph (1), (2), or (3) of section 4(c), or
18 a Pumping Protection Agreement, naming the United
19 States or the Tribe as a party—

20 (1) the United States, the Tribe, or both may
21 be added as a party to any such ligation, and any
22 claim by the United States or the Tribe to sovereign
23 immunity from such suit is hereby waived, other
24 than with respect to claims for monetary awards ex-

1 cept as specifically provided for in the Settlement
2 Agreement; and

3 (2) the Tribe may waive its sovereign immunity
4 from suit in the Superior Court of Apache County,
5 Arizona for the limited purposes of enforcing the
6 terms of the Intergovernmental Agreement, and any
7 intergovernmental agreement required to be entered
8 into by the Tribe under the terms of the Intergov-
9 ernmental Agreement, other than with respect to
10 claims for monetary awards except as specifically
11 provided in the Intergovernmental Agreement.

12 (b) TRIBAL USE OF WATER.—

13 (1) IN GENERAL.—With respect to water rights
14 made available under the Settlement Agreement and
15 used on the Zuni Heaven Reservation—

16 (A) such water rights shall be held in trust
17 by the United States in perpetuity, and shall
18 not be subject to forfeiture or abandonment;

19 (B) State law shall not apply to water uses
20 on the Reservation;

21 (C) the State of Arizona may not regulate
22 or tax such water rights or uses (except that
23 the court with jurisdiction over the decree en-
24 tered pursuant to the Settlement Agreement or

1 the Norviel Decree Court may assess adminis-
2 trative fees for delivery of this water);

3 (D) subject to paragraph 7.7 of the Settle-
4 ment Agreement, the Zuni Tribe shall use
5 water made available to the Zuni Tribe under
6 the Settlement Agreement on the Zuni Heaven
7 Reservation for any use it deems advisable; and

8 (E) water use by the Zuni Tribe or the
9 United States on behalf of the Zuni Tribe for
10 wildlife or instream flow use, or for irrigation to
11 establish or maintain wetland on the Reserva-
12 tion, shall be considered to be consistent with
13 the purposes of the Reservation.

14 (2) LIMITATION.—

15 (A) IN GENERAL.—Subject to subpara-
16 graph (B), the Zuni Tribe or the United States
17 shall not sell, lease, transfer, or transport water
18 made available for use on the Zuni Heaven Res-
19 ervation to any other place.

20 (B) EXCEPTION.—Water made available to
21 the Zuni Tribe or the United States for use on
22 the Zuni Heaven Reservation may be severed
23 and transferred from the Reservation to other
24 Zuni Lands if the severance and transfer is ac-
25 complished in accordance with State law (and

1 once transferred to any lands held in fee, such
2 water shall be subject to State law).

3 (c) RIGHTS-OF-WAY.—The United States and the
4 Zuni Tribe shall not unreasonably withhold consent for
5 easements and rights-of-way for roads, utilities, and other
6 necessary accommodations for adjoining landowners
7 across the lands identified in subsection (a) or (b) of sec-
8 tion 5 unless such easements and rights-of-way will cause
9 significant and substantial harm to the Tribe's wetland
10 restoration project or religious practices. If such harm is
11 anticipated, the Zuni Tribe shall negotiate in good faith
12 with the entity seeking the easements or rights-of-way for
13 a reasonable accommodation of their mutual interests.

14 (d) CERTAIN CLAIMS PROHIBITED.—The United
15 States shall make no claims for reimbursement of costs
16 arising out of the implementation of this Act or the Settle-
17 ment Agreement against any Indian-owned land within the
18 Tribe's Reservation, and no assessment shall be made in
19 regard to such costs against such lands.

20 (e) VESTED RIGHTS.—Except as described in para-
21 graph 5.3 of the Settlement Agreement (recognizing the
22 Zuni Tribe's use of 1,500 acre-feet per annum of under-
23 ground water) this Act and the Settlement Agreement do
24 not create any vested right to groundwater under Federal
25 or State law, or any priority to the use of groundwater

1 that would be superior to any other right or use of ground-
2 water under Federal or State law, whether through this
3 Act, the Settlement Agreement, or by incorporation of any
4 abstract, agreement, or stipulation prepared under the
5 Settlement Agreement. Notwithstanding the preceding
6 sentence, the rights of parties to the agreements referred
7 to in paragraph (1), (2), or (3) of section 4(c) and para-
8 graph 5.8 of the Settlement Agreement, as among them-
9 selves, shall be as stated in those agreements.

10 (f) OTHER CLAIMS.—Nothing in the Settlement
11 Agreement or this Act shall be construed in any way to
12 quantify or otherwise affect the water rights, claims, or
13 entitlements to water of any Indian tribe, band, or com-
14 munity, other than the Zuni Indian Tribe.

15 (g) NO MAJOR FEDERAL ACTION.—Execution of the
16 Settlement Agreement by the Secretary as provided for in
17 section 4(a) shall not constitute major Federal action
18 under the National Environmental Policy Act (42 U.S.C.
19 4321 et seq.) (in this Act referred to as “NEPA”). The
20 Secretary shall comply with NEPA and shall carry out any
21 other necessary environmental compliance during the im-
22 plementation phase of this settlement.

1 **SEC. 9. EFFECTIVE DATE FOR WAIVER AND RELEASE AU-**
2 **THORIZATIONS.**

3 (a) IN GENERAL.—The waiver and release authoriza-
4 tions contained in subsections (b) and (c) of section 7 shall
5 become effective as of the date the Secretary causes to
6 be published in the Federal Register a statement of all
7 the following findings:

8 (1) This Act has been enacted in a form ap-
9 proved by the parties in paragraph 3.1.A of the Set-
10 tlement Agreement.

11 (2) The funds authorized by section 4(b) have
12 been appropriated and deposited into the Fund.

13 (3) The State of Arizona has appropriated and
14 deposited into the Fund the amount required by
15 paragraph 7.6 of the Settlement Agreement.

16 (4) The Zuni Indian Tribe has either purchased
17 or acquired the right to purchase at least 2,350
18 acre-feet per annum of surface water rights, or
19 waived this condition as provided in paragraph 3.2
20 of the Settlement Agreement.

21 (5) Pursuant to subparagraph 3.1.D of the Set-
22 tlement Agreement, the severance and transfer of
23 surface water rights that the Tribe owns or has the
24 right to purchase have been conditionally approved,
25 or the Tribe has waived this condition as provided
26 in paragraph 3.2 of the Settlement Agreement.

1 (6) Pursuant to subparagraph 3.1.E of the Set-
2 tlement Agreement, the Tribe and Lyman Water
3 Company have executed an agreement relating to
4 the process of the severance and transfer of surface
5 water rights acquired by the Zuni Tribe or the
6 United States, the pass-through, use, or storage of
7 the Tribe's surface water rights in Lyman Lake, and
8 the operation of Lyman Dam.

9 (7) Pursuant to subparagraph 3.1.F of the Set-
10 tlement Agreement, all the parties to the Settlement
11 Agreement have agreed and stipulated to certain Ar-
12 izona Game and Fish abstracts of water uses.

13 (8) Pursuant to subparagraph 3.1.G of the Set-
14 tlement Agreement, all parties to the Settlement
15 Agreement have agreed to the location of an obser-
16 vation well and that well has been installed.

17 (9) Pursuant to subparagraph 3.1.H of the Set-
18 tlement Agreement, the Zuni Tribe, Apache County,
19 Arizona and the State of Arizona have executed an
20 Intergovernmental Agreement that satisfies all of
21 the conditions in paragraph 6.2 of the Settlement
22 Agreement.

23 (10) The Zuni Tribe has acquired title to the
24 section of land adjacent to the Zuni Heaven Res-
25 ervation described as Section 34, Township 14

1 North, Range 26 East, Gila and Salt River Base
2 and Meridian.

3 (11) The Settlement Agreement has been modi-
4 fied if and to the extent it is in conflict with this Act
5 and such modification has been agreed to by all the
6 parties to the Settlement Agreement.

7 (12) A court of competent jurisdiction has ap-
8 proved the Settlement Agreement by a final judg-
9 ment and decree.

10 (b) DEADLINE FOR EFFECTIVE DATE.—If the publi-
11 cation in the Federal Register required under subsection
12 (a) has not occurred by December 31, 2004, sections 4
13 and 5, and any agreements entered into pursuant to sec-
14 tions 4 and 5 (including the Settlement Agreement and
15 the Intergovernmental Agreement) shall not thereafter be
16 effective and shall be null and void. Any funds and the
17 interest accrued thereon appropriated pursuant to section
18 4(b)(2) shall revert to the Treasury, and any funds and
19 the interest accrued thereon appropriated pursuant to
20 paragraph 7.6 of the Settlement Agreement shall revert
21 to the State of Arizona.